



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20535

January 13, 1998

Angie Rogers LaPlace, Esq.
Assistant Attorney General
P.O. Box 94005
Baton Rouge, Louisiana 70804-9005

Dear Ms. LaPlace:

This refers to Section 2 of Act No. 1420 (1997), which changes the time period during which voting precinct boundaries cannot be changed; requires voting precinct boundaries to follow Census tabulation boundaries as of July 1, 1997; changes the effective dates for new precincts; specifies the voting precincts that will be used for reapportionment purposes; clarifies which voting districts are to be considered when consolidating precincts, and permits consolidation of voting precincts from different voting districts through June 30, 1998, for the State of Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 29, 1997, request for additional information on September 30 and November 14, 1997.

With the exception of provisions concerning the time period during which voting precinct boundaries cannot be changed, the Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot reach the same conclusion regarding the provisions of Act No. 1420 (1997) that concern the period during which voting precinct boundaries cannot be changed. To reach this conclusion, we have considered carefully the information you have provided in this submission, and the information in our files concerning the redistricting submissions of many of the parish governing authorities and school districts within the state following the 1990 Census, as well as Census data and information and comments from other interested persons.

Under state law, parish governing authorities are authorized to change voting precinct boundaries, but are generally required to do so in a manner that avoids splitting a voting precinct between two or more voting districts. In the past, the state, in preparation for the decennial census, has limited the ability of parish officials to change voting precinct boundaries in anticipation of the tabulation and release of new Census data. Under existing law, parish officials would not be permitted to alter voting precinct boundaries from January 1, 1999, through December 31, 2000, unless ordered to do so by a court or as a result of changes in municipal boundaries. It is anticipated that Census data will be made available to the state from the U.S. Bureau of the Census by April 1, 2001. Under the proposed changes, the period during which parish officials would be prohibited from changing precinct boundaries would be extended to December 31, 2003, except that voting precincts that include fewer than 300 voters may be consolidated after January 1, 2002, so long as consolidated precincts do not cross voting district lines as those districts are reapportioned. The proposed changes are a sharp departure from prior law and practice in that they continue the freeze for a longer period of time and without exceptions or a window of opportunity similar to those present in prior decades.

State officials indicate that they fully expect that subjurisdictions within the state will have completed the redistricting process and will have adopted new plans by December 31, 2003, in anticipation of state and local elections scheduled in that year. Thus, the five-year prohibition on precinct changes would freeze the boundaries of voting precincts during the critical period when state and local officials are engaged in redistricting. The proposed freeze, in combination with the state's requirement that voting precincts include no more than one voting district, will have a significant impact on the redistricting choices of state and local officials and, in effect, will require that newly drawn districts include whole voting precincts, regardless of the impact on minority voters.

Under existing law, parish election officials may generally use their discretion in determining the composition of voters included within a voting precinct primarily because voting precincts, in large part, serve only to define which voters will vote together in the same location on election day. This administrative function, albeit important, differs significantly from the function of voting district boundaries. If local officials are permitted to alter voting precinct lines in the redistricting context, they can continue to achieve the election administration function that precincts serve without hampering

redistricting choices. If, however, officials are not permitted to alter precinct boundaries and, where voting precincts do not fairly reflect minority voting strength, it will be virtually impossible to draw voting districts that fully reflect minority voting strength.

Unlike legislation adopted during the 1990 redistricting period in response to concerns by local officials about the freeze on precinct changes imposed at that time¹, Act No. 1420 (1997) does not include any opportunity for precinct changes during the time when redistricting is expected to occur. Nor does the Act authorize local officials to change precinct boundaries if necessary to satisfy the requirements of Section 5 of the Voting Rights Act. An early version of Act No. 1420 included an exception to the general prohibition on changing precincts and provided a window of opportunity for parish officials to change precinct lines once Census data were released and redistricting began. State officials indicate that the state did not include this window of opportunity and exception to the freeze provision in the final version of the bill adopted as Act No. 1420 because the state had not consulted with local officials before adopting the proposed freeze, and because sufficient time remains in advance of the 2000 Census to address these concerns. We, however, must evaluate the potential effect of voting changes the state has in fact enacted and submitted for Section 5 review -- not what the state may enact at some future point in time.

Our review of post-1990 Census redistricting submissions for parish governing authorities and school districts in the state suggests that if parish officials lack the authority to make changes in voting precinct lines during the entire period when most redistricting will occur, local officials may be forced to adopt plans that do not fairly recognize minority voting strength. Thus, the proposed changes may well hamper the ability of state and local officials to draw districts that do not fragment, pack or submerge minority voters, and, in the context of racially polarized voting, may well leave minority voters worse off in terms of their electoral opportunity under post-2000 redistricting plans. Voting changes that will "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise," violate Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976).

¹ These acts were precleared by the Department of Justice: Act 288 (1990), precleared on November 1, 1990; Act 925 (1992), precleared on December 1, 1992; and Act 286 (1993), precleared on November 16, 1993.

While we are not unmindful of the state's interest in ensuring the orderly administration of elections, that interest must be bounded in some reasonable way so as not to impinge too heavily on the important federal interest the state and its political subdivisions have in complying with the requirements of federal law. Under the proposed freeze provisions, local officials will be hamstrung in their efforts to comply with the Voting Rights Act because the state has not taken any steps to ensure that they will have an opportunity to adjust voting precinct boundaries in the context of redistricting in order to avoid the impact on minority voting strength that rigid adherence to the "whole precinct" redistricting requirement is likely to produce.

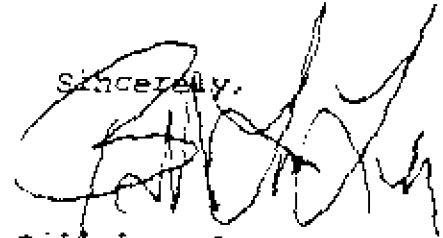
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed provisions of Act No. 1420 (1997) that concern the time period during which voting precinct boundaries cannot be changed.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the provisions of Act No. 1420 (1997) that concern the time period during which voting precinct boundaries cannot be changed continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Finally, we note that the provisions of Act No. 1420 (1997) precleared in this letter include provisions that are enabling in nature. Therefore, local jurisdictions are not relieved of their responsibility to seek Section 5 preclearance of any changes affecting voting that are adopted pursuant to this legislation (e.g., changes in voting precinct boundaries, including the creation, elimination and consolidation of precincts). See 28 C.F.R. 51.15.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Louisiana plans to take concerning this matter. If you have any questions, you should call Susan Barbosa Fisch (202-514-3539), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Lann Lee", written over the word "Sincerely,".

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division